

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VICTOR E. TRUJILLO,

Applicant,

v.

CV 08-0012 JH/WPL

TIMOTHY HATCH, WARDEN, AND
THE ATTORNEY GENERAL OF
THE STATE OF NEW MEXICO,

Respondents.


**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

This matter is before the Court on the Magistrate Judge's Proposed Findings and Recommended Disposition (PFRD) and Victor E. Trujillo's objections thereto. Trujillo's objections consist of copies of pages from the Memorandum in Opposition to Proposed Summary Affirmance and Motion to Amend the Docketing Statement filed by his attorney during his direct appeal in state court. (*Compare* Doc. 14 *with* Doc. 9 Ex. N.) The memorandum makes two arguments. First, Trujillo's guilty plea was involuntary and he should be allowed to withdraw his plea because it was legally impossible to commit the crimes to which he pled guilty. Second, Trujillo's multiple sentences for criminal sexual penetration and contributing to the delinquency of a minor violate his right to be free from double jeopardy.

The first argument relates to the actual innocence issue discussed in the PFRD. Having conducted a *de novo* review, I conclude that the magistrate judge properly resolved this issue. The second argument was not included in Trujillo's federal habeas application. "Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived." *See Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996).

IT IS THEREFORE ORDERED that:

- 1) the Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 13) are adopted by the Court;
- 2) Trujillo's Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a Person in State Custody (Doc. 5) is denied;
- 3) Trujillo's Motion for the Appointment of Counsel (Doc. 3) is denied; and
- 4) this cause is dismissed with prejudice.



JUDITH HERRERA
UNITED STATES DISTRICT JUDGE